IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

RP.No. 411 of 2006(R)

AGAINST THE JUDGEMENT/ORDER IN WPC.25773/2004 dt.18.4.2006

rEVIEW PETITIONERS/RESPONDENTS

1. **STATE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS, SANTHI NAGAR, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER

RESPONDENTS: PETITIONER

1. **DEEPA KOSHY, H.S.S.T.(MATHEMATICS), ST.GEORGE H.S.S., KULATHUVAYAL.**

2. **JANCY JOSE, H.S.S.T.(PHYSICS), ST.GEORGE'S H.S.S., KULATHUVAYAL P.O., KAYANNA.**

3. **NAVINKUMAR G., H.S.S.T.(JR.HINDI), EZHIPURAM H.S.S., PARIPPALLY, KOLLAM.**

4. **SHEEJA C.D., H.S.S.T.(MATHEMATICS), EZHIPURAM H.S.S., PARIPPALLY, KOLLAM.**

5. **BINU B.S., H.S.S.T.(ENGLISH), EZHIPURAM H.S.S., PARIPPALLY, KOLLAM.**

6. **PREETHA P.C., H.S.S.T.(CHEMISTRY), MALABAR CHRISTIAN COLLEGE H.S.S., KOZHIKODE.**

7. JILS P. JOSE, H.S.S.T.(CHEMISTRY),
ST.JOSEPH'S H.S.S., PERUVANTHANAM,
IDUKKI.

8. K.M.GOVINDAN NAMBOOTHIRI,
H.S.S.T.(HINDI), S.S.H.S.S.,
KATTUKUKKE, PERLA, KASARGODU.

9. LIJESH C., H.S.S.T.(PHYSICS),
N.A.M.H.S.S., PERINGATHUR,
THALASSERY, KANNUR.

10. P.T.AJITHKUMAR, H.S.S.T.(ECONOMICS),
S.N.D.P.H.S.S., KILIROOR,
KANJIRAM, KOTTAYAM-30.

11. JOLLY VARGHESE, H.S.S.T.(JR.CHEMISTRY),
L.S.N.GIRLS H.S.S., OTTAPALAM.

12. SEEMA M.M., H.S.S.T.(JR.PHYSICS),
H.D.P.S.H.S.S., EDATHIRINJI,
THRISSUR DISTRICT.

BY ADV. SRI.BENOY THOMAS

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 23/01/2007, ALONG WITH RP. NO705/2006 AND CONNECTED CASES
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

R.P.Nos.411, 710, 705, 708, 730 and 709 OF 2006

Dated this the 23rd day of January, 2007

O R D E R

The petitioners in the writ petitions are approved Higher Secondary School Teachers working in respective schools shown against their addresses in the Writ Petition. All of them were appointed between 13.2.01 and 12.11.01. The Supreme Court by its judgment in **Dollichan**'s case [2001(1) SCC 151] imposed a specific ban of three months for making appointments in Aided Higher Secondary School and directed the Government to frame recruitment rules within that period. 13.2.01 is the date on which the period of three months ban expired. The Government did not frame recruitment rules within the time frame set by the Supreme Court and came out with rules only on 12.11.01. All the writ petitioners were having the educational qualifications prescribed by the rules but they did not have SET. They were all appointed on the basis of GO(MS) No.238/2000/G.Edn dt.25.8.2000 which permitted such appointments in the absence of the SET qualified hands. A Division Bench of this Court in WA No.2245/2002 by judgment dt.22.1.03 and connected matters(produced as Ext.P2 in the Writ Petitions) directed the approving authority to clear the appointments made during the above period and further directed that the persons appointed without SET

qualification and in the absence of SET qualified hands will not be denied approval provided, those persons are having the other qualifications at the time of their appointments. It was also held in Ext.P2 that GO(MS) No.298/2000/G.Edn dt.25.8.2000 was in force at the time of appointment. The Government went in appeal against Ext.P2 judgment but when the Special Leave Petition [SLP (C) No.7224/2003] came up for consideration, the same was allowed to be withdrawn by the Government on recording the statement of the Government's counsel that no review will be filed. Ext.P3 produced in the Writ Petition is copy of the order of the Supreme Court in that regard. The petitioners pointed out in the Writ Petitions that Ext.P2 judgment has thus attained finality. Thereafter in compliance of Ext.P2 judgment the Government issued GO(MS)199/2003/G.Edn dt.24.7.03 (Ext.P4 GO). But while issuing Ext.P4 GO the absence clause provided in Ext.P2 judgment regarding SET was ignored by the Government and Clause 6(c) of Ext.P4 GO provided that teachers who do not possess SET till the date of the GO will be terminated. Thereafter persons who were appointed without SET in the absence of SET qualified hands but possessing the other qualifications prescribed but were yet to pass SET approached this Court challenging Clause 6(c) of Ext.P4 on the ground that the same is contrary to Ext.P2 judgment. A learned Single Judge of

this Court in Writ Petition No.26588/2003 by judgment dt.13.7.04 set-aside Clause 6(c) of Ext.P3 GO and directed approval of the appointments given to the petitioners therein in accordance with Ext.P2 judgment which is to the effect that persons without SET but appointed in the absence of SET qualified hands will not be denied approval. Ext.P4 is that judgment. The Government preferred Writ Appeal against Ext.P4 judgment. The Division Bench considered the above WA No.1927 of 2004 and confirmed Ext.P4 judgment. Ext.P5 is copy of the judgment of the Division Bench. The Division Bench through Ext.P5 judgment has clarified that in Ext.P2 judgment in WA No.2242 of 2002 it was not stipulated that the authorities will be entitled to approve the appointments only after they passed the SET. The petitioners point out that the parties to WA Nos.2242 of 2002 and 1927 of 2004 who were not having SET qualifications at all were all granted approval with effect from the dates of their respective appointments in compliance with the judgment in those two Writ Appeals. The claim of the petitioners in the writ petitions is that they were appointed without SET in the absence of SET qualified hands but possessing all other qualifications at the time of their appointment are similarly situated as the parties in WA No.2245/02 and WA No.1927/04. In fact, their claim is that they are on stronger footings than the parties in those Writ Appeals since all of them had

subsequently passed SET unlike the parties in WA No.2245/02 and 1927/04. Voicing the grievance that the approving authority has ignored the judgments in WA No.2245/03 and WA No.1927/04 and granted them approval only with effect from the date of passing the SET by wrongly invoking Clause 6(b) of GO(MS) 199/2003, they filed the Writ Petitions seeking the following reliefs:

i. Direct the 2nd respondent-Director of Higher Secondary Education to approve the appointment of the petitioners as HSST-HSST(Jr.) as the case may be in their respective schools as per the directions contained in the judgment in WA No. 2245/03 in terms of which identical Writ Petitions were disposed of untrammeled by GO(MS) No.199/2003 with effect from their original date of appointment if the appointment is in the absence of SET qualified hands;

ii. Issue a writ of certiorari quashing Clause 6(b) of Ext.P4 GO. In case this Court finds that relief cannot be granted as prayed for by the petitioners under prayer No.1 without quashing Clause (b);

2. By a common judgment I disposed of all the Writ Petitions directing the Director of Higher Secondary Education to consider and pass orders upon representations permitted to be filed in the light of the judgment in WA No.2245/02 and WA No.1927/2004. Later by order dt.18.04.06 in IA No.5481/06, a clarification petition filed by the Writ Petitioners, I clarified that in view of the terms in judgment in WA

No.2245/02 and the judgment in WA No.1927/04, the petitioners will be eligible for approval with effect from the date of their appointment provided they were actually appointed in the absence of SET qualified hands and they actually possessed other required educational qualifications at the time of their appointments notwithstanding their passing of SET subsequent to their appointments.

3. R.P. No.411/2006 is filed by the State and the Director who are respondents in the Writ Petition seeking a review of the order of clarification passed in IA No.5481/06. The other review petitions have all been filed by the Writ Petitioners themselves. In the light of R.P. filed by the Government, this Court is obliged to pronounce finally on the issue.

4. I have heard the submissions of Sri.Binoy Thomas, counsel for the Writ Petitioners and also those of Sri.K.K.Ravindranath, Senior Government Pleader and Liaison Officer on behalf of the Government and the Director of Higher Secondary Education. The learned counsel and the learned Senior Government Pleader would re-argue the writ petitions thoroughly inviting my attention to the various Government Orders and judgments placed on record in the cases. I shall deal with the review petitions filed by the Writ Petitioners first.

5. My attention was drawn specifically by Mr.Binoy Thomas to

annexures A2, A3 and A4, fresh documents produced along with the review petitions filed by him. Annexures A2, A3 and A4 are documents which will show that petitioners 1 to 5 in WP(C) No.31300/2004, one Abdul Rahiman K., Rasheed P.V., Faizal K., Abdul Majeed T.K. and Abdul Rahiman Mannithody, HSST(Jrs)/HSST of E.M.E.A HSS, Kondotty who were earlier granted approval only with effect from the date of passing of SET invoking Clause 6(b) of GO(MS) No.199/2003 were subsequently granted approval with effect from their date of appointment itself. In fact, by Annexure A2, Director of Higher Secondary Education directed the manager of the school to report whether those teachers were appointed in the absence of SET qualified hands. On getting Annexure A3 report from the Manager, the Director under Annexure A4 granted approval to them with effect from their dates of appointment noticing that those teachers were appointed in the absence of SET qualified hands. These annexures,A2 to A4, will show that five writ petitioners in WP(C) No.31300/2004 in respect of which RP No.709/06 has been filed were similarly circumstanced as the other four Writ Petitioners in that case (who are the petitioners in RP No.709/06) have been given the relief which was sought for in the Writ Petition. In the teeth of annexures A2 to A4 considerations of fairness and justice will demand that the review petitioners in RP 709/06 and for

that matter the writ petitioners in other cases also, all of them being similarly circumstanced as the beneficiaries of annexures A2 to A4 be given the same relief. But then Sri.K.K. Ravindranath, the learned Liaison Officer would remind me of the limits of this Court's jurisdiction for review and submit that production of fresh evidence which could have been produced earlier cannot be a ground for review. Sri.Binoy Thomas would submit that though the beneficiaries of annexures A2 to A4 were the petitioners in WP(C) No.31300/04 and annexures A2 to A4 were issued much before the date of disposal of the Writ Petition, that vital aspect of the matter was not brought to his notice by the present review petitioners who were persons actually instructing him and that is the reason for the non-production of those annexures earlier. I am convinced that the persons who were instructing the learned counsel had not brought to his notice, annexures A2 to A4 at the time when the writ petition came up for consideration since, had it been so the learned counsel would have certainly highlighted annexures A2 to A4 which are materials strongly supporting the grounds raised in the Writ Petition. A Constitution Bench of the Supreme Court has held in **Sivadi Singh v. State of Punjab (AIR 1993 SC 1909)** after referring to Article 226 of the Constitution, Order 47 Rule (1) of the CPC and the powers which are inherent in the High Court, that there is nothing in Article 226 which

precludes the High Court on exercising the powers of review which inheres in every Court of pleanary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Supreme Court held in that case that the High Court was justified in entertaining the review petition on principles of natural justice also. The petitioners in RP NO.709/06 and for that matter all the writ petitioners in other cases being similarly circumstanced as the beneficiaries of annexures A2 to A4 deserves to be treated similarly, lest there should be violation of the principles of equality underlying Article 14 of the Constitution. Denying relief to the writ petitioners in the face of annexures A2 to A4 according to me will be sheer in justice which this Court must always endeavor to avoid.

6. I have indicated in the judgment sought to be reviewed that the submissions advanced on behalf of the writ petitioners that in the light of the finality attained by the judgments in WA No.2245/02 and WA No.1927/04, prayer No.1 in the Writ Petition seeking a direction to approve the appointment of the petitioners with effect from the original dates of their appointment ought to be granted were very pursuasive. I however, opined that so long as Clause 6(b) of GO(MS) No.199/03 stands, relief No.1 cannot be granted straight away. I also observed that on the submissions then made I am not inclined to quash Clause 6

(b) either. But then I do find force in the present submissions of Mr.Binoy Thomas that relief No.1 can be granted by this Court even without quashing Clause 6(b) since many of these writ petitioners in the writ petition are parties in WA No.2245 of 2002 and judgment in WA No.2245 of 2002 and WA No.1927 of 2004 having attained finality are binding on the respondents in the Writ Petition. In fact at the time when the writ petitions were argued, the grantability of relief No.1 even without quashing Clause 6(b) was not given the required thrust by the learned counsel which tempted me to conclude that so long as Clause 6(b) stands, grantability of relief No.1 in the light of the judgments in Writ Appeals should receive the attention of the respondents first. But I notice that relief No.2 for quashing Clause 6(b) had been made only as an alternative prayer. In fact it was noticing this aspect of the matter also that I allowed the clarification petition by the order which is now sought to be reviewed by filing RP No.411 of2006. The crux question is whether the writ petitioners are entitled for the primary relief that they have sought for. Even the respondents have conceded by issuing annexures A2 to A4 that the petitioners are entitled for the same. If that be so, it is necessary on considerations of justice that the matter is not delayed further and specific directions are issued to the respondents. Sri.K.K. Ravindranath, learned Liaison Officer would depict what he

described as the grim financial position of the Government now. According to him directing release of the monetary benefits which will follow if writ petitions are allowed will impose a very heavy burden on the Government. The above argument of the learned Liaison Officer will not go unnoticed.

7. The grounds raised in RP No.411/2006 are technically strong but having considered the merits of the matter, this Court cannot allow the interests of the technicalities to have a march over those of substantial justice. The result is that all the review petitions filed by the writ petitioners(R.P. Nos. 710, 705, 708, 709 and 730 of 2006) will stand allowed and R.P. No.411 of 2006 will stand dismissed.

The common judgment dt.10.2.06 in the writ petitions will stand reviewed. All the writ petitions will stand allowed directing the 2nd respondent-Director of Higher Secondary Education to grant approval to the appointments given to the petitioners with effect from their date of appointment, once it is seen that they are appointed without SET in the absence of SET qualified hands and they possessed all other required qualifications at the time of their appointment. The petitioners who are eligible for approval as directed above will be entitled for release of consequential monetary benefits. But actual cash payment of the monetary benefits need be made only prospectively with effect from

01.01.2007. The arrears due can be paid either by giving credit to the Provident Fund account or in form of interest fetching Government Securities. Orders as directed above will be issued by the respondents within two months of receiving copy of this order.

PIUS C. KURIAKOSE, JUDGE

btt